

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

V.

DIABLO S. WILLIAM,

Defendant.

CASE NO. 8:10CR248

MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's Motion for Certificate of Appealability which has been construed as a Notice of Appeal (Filing No. 101). The Defendant appeals from the Memorandum and Order (Filing No. 83) and Judgment (Filing No. 84) denying his Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("§ 2255 motion").

Before the Defendant may appeal the denial of his § 2255 motion, a “Certificate of Appealability” must issue. Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (“AEDPA”), the right to appeal the denial of a motion filed pursuant to 28 U.S.C. § 2255 is governed by the certificate of appealability requirements of 28 U.S.C. § 2253(c). 28 U.S.C. § 2253(c)(2) provides that a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right:

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

□ □ □ □

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c).

A “substantial showing of the denial of a constitutional right” requires “a showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” “ *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citation omitted).

For the reasons set forth in the previously issued Memorandum and Order (Filing No. 83) denying the Defendant’s § 2255 motion, the Court concludes that the Defendant has not made a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c).

IT IS ORDERED:

1. The Defendant’s Motion for Certificate of Appealability is denied;
2. The Defendant is allowed to proceed in forma pauperis;
2. The Clerk of Court shall provide a copy of this Order to the Eighth Circuit Court of Appeals; and
3. A copy of this Memorandum and Order shall be mailed to the Defendant at his last known address.

DATED this 2nd day of June, 2014.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge